

ASSEMBLY BILL

No. 334

Introduced by Assembly Member Levine

February 13, 2007

An act to amend Section 12001 of, and to add Section 12043 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 334, as introduced, Levine. Firearms: loss and theft.

Existing law defines “firearm” and provides that for certain purposes, including certain offenses, “firearm” includes the frame or receiver of the weapon.

This bill would provide that the term “firearm” also includes the frame or receiver of the weapon for purposes of the offense of failure to report a stolen or lost firearm.

Existing law generally regulates the possession of firearms.

This bill would make it an infraction for any person whose handgun is stolen or irretrievably lost to, within 5 working days after his or her discovery or knowledge of, or within 5 working days after the date he or she should reasonably have known of, the theft or loss, fail to report the theft or loss to a local law enforcement agency of the jurisdiction in which the theft or loss occurred or in which the person resides. The bill would require specified notices of this requirement to persons acquiring handguns after July 1, 2008, as specified. The bill would provide that local governments are not prohibited from enacting ordinances imposing reporting requirements that are more strict than those specified in the bill. The bill would require the Attorney General, in cooperation with law enforcement agencies and firearms-related

organizations to develop a protocol for the implementation of these provisions, as specified, on or before April 1, 2008.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12001 of the Penal Code is amended to
2 read:

3 12001. (a) (1) As used in this title, the terms “pistol,”
4 “revolver,” and “firearm capable of being concealed upon the
5 person” shall apply to and include any device designed to be used
6 as a weapon, from which is expelled a projectile by the force of
7 any explosion, or other form of combustion, and that has a barrel
8 less than 16 inches in length. These terms also include any device
9 that has a barrel 16 inches or more in length which is designed to
10 be interchanged with a barrel less than 16 inches in length.

11 (2) As used in this title, the term “handgun” means any “pistol,”
12 “revolver,” or “firearm capable of being concealed upon the
13 person.”

14 (b) As used in this title, “firearm” means any device, designed
15 to be used as a weapon, from which is expelled through a barrel,
16 a projectile by the force of any explosion or other form of
17 combustion.

18 (c) As used in Sections 12021, 12021.1, 12043, 12070, 12071,
19 12072, 12073, 12078, 12101, and 12801 of this code, and Sections
20 8100, 8101, and 8103 of the Welfare and Institutions Code, the
21 term “firearm” includes the frame or receiver of the weapon.

22 (d) For the purposes of Sections 12025 and 12031, the term
23 “firearm” also shall include any rocket, rocket propelled projectile
24 launcher, or similar device containing any explosive or incendiary
25 material whether or not the device is designed for emergency or
26 distress signaling purposes.

1 (e) For purposes of Sections 12043, 12070, 12071, and
2 paragraph (8) of subdivision (a), and subdivisions (b), (c), (d), and
3 (f) of Section 12072, the term “firearm” does not include an
4 unloaded firearm that is defined as an “antique firearm” in Section
5 921(a)(16) of Title 18 of the United States Code.

6 (f) Nothing shall prevent a device defined as a “handgun,”
7 “pistol,” “revolver,” or “firearm capable of being concealed upon
8 the person” from also being found to be a short-barreled shotgun
9 or a short-barreled rifle, as defined in Section 12020.

10 (g) For purposes of Sections 12551 and 12552, the term “BB
11 device” means any instrument that expels a projectile, such as a
12 BB or a pellet, not exceeding 6mm caliber, through the force of
13 air pressure, gas pressure, or spring action, or any spot marker gun.

14 (h) As used in this title, “wholesaler” means any person who is
15 licensed as a dealer pursuant to Chapter 44 (commencing with
16 Section 921) of Title 18 of the United States Code and the
17 regulations issued pursuant thereto who sells, transfers, or assigns
18 firearms, or parts of firearms, to persons who are licensed as
19 manufacturers, importers, or gunsmiths pursuant to Chapter 44
20 (commencing with Section 921) of Title 18 of the United States
21 Code, or persons licensed pursuant to Section 12071, and includes
22 persons who receive finished parts of firearms and assemble them
23 into completed or partially completed firearms in furtherance of
24 that purpose.

25 “Wholesaler” shall not include a manufacturer, importer, or
26 gunsmith who is licensed to engage in those activities pursuant to
27 Chapter 44 (commencing with Section 921) of Title 18 of the
28 United States Code or a person licensed pursuant to Section 12071
29 and the regulations issued pursuant thereto. A wholesaler also does
30 not include those persons dealing exclusively in grips, stocks, and
31 other parts of firearms that are not frames or receivers thereof.

32 (i) As used in Section 12071 or 12072, “application to purchase”
33 means any of the following:

34 (1) The initial completion of the register by the purchaser,
35 transferee, or person being loaned the firearm as required by
36 subdivision (b) of Section 12076.

37 (2) The initial completion and transmission to the department
38 of the record of electronic or telephonic transfer by the dealer on
39 the purchaser, transferee, or person being loaned the firearm as
40 required by subdivision (c) of Section 12076.

1 (j) For purposes of Section 12023, a firearm shall be deemed
2 to be “loaded” whenever both the firearm and the unexpended
3 ammunition capable of being discharged from the firearm are in
4 the immediate possession of the same person.

5 (k) For purposes of Sections 12021, 12021.1, 12025, 12070,
6 12072, 12073, 12078, 12101, and 12801 of this code, and Sections
7 8100, 8101, and 8103 of the Welfare and Institutions Code,
8 notwithstanding the fact that the term “any firearm” may be used
9 in those sections, each firearm or the frame or receiver of the same
10 shall constitute a distinct and separate offense under those sections.

11 (l) For purposes of Section 12020, a violation of that section as
12 to each firearm, weapon, or device enumerated therein shall
13 constitute a distinct and separate offense.

14 (m) Each application that requires any firearms eligibility
15 determination involving the issuance of any license, permit, or
16 certificate pursuant to this title shall include two copies of the
17 applicant’s fingerprints on forms prescribed by the Department of
18 Justice. One copy of the fingerprints may be submitted to the
19 United States Federal Bureau of Investigation.

20 (n) As used in this chapter, a “personal handgun importer”
21 means an individual who meets all of the following criteria:

22 (1) He or she is not a person licensed pursuant to Section 12071.

23 (2) He or she is not a licensed manufacturer of firearms pursuant
24 to Chapter 44 (commencing with Section 921) of Title 18 of the
25 United States Code.

26 (3) He or she is not a licensed importer of firearms pursuant to
27 Chapter 44 (commencing with Section 921) of Title 18 of the
28 United States Code and the regulations issued pursuant thereto.

29 (4) He or she is the owner of a ~~pistol, revolver, or other firearm~~
30 ~~capable of being concealed upon the person~~ *handgun*.

31 (5) He or she acquired that ~~pistol, revolver, or other firearm~~
32 ~~capable of being concealed upon the person~~ *handgun* outside of
33 California.

34 (6) He or she moves into this state on or after January 1, 1998,
35 as a resident of this state.

36 (7) He or she intends to possess that ~~pistol, revolver, or other~~
37 ~~firearm capable of being concealed upon the person~~ *handgun* within
38 this state on or after January 1, 1998.

39 (8) The ~~pistol, revolver, or other firearm capable of being~~
40 ~~concealed upon the person~~ *handgun* was not delivered to him or

1 her by a person licensed pursuant to Section 12071 who delivered
2 that firearm following the procedures set forth in Section 12071
3 and subdivision (c) of Section 12072.

4 (9) He or she, while a resident of this state, had not previously
5 reported his or her ownership of that ~~pistol, revolver, or other~~
6 ~~firearm capable of being concealed upon the person~~ *handgun* to
7 the Department of Justice in a manner prescribed by the department
8 that included information concerning him or her and a description
9 of the firearm.

10 (10) The ~~pistol, revolver, or other firearm capable of being~~
11 ~~concealed upon the person~~ *handgun* is not a firearm that is
12 prohibited by subdivision (a) of Section 12020.

13 (11) The ~~pistol, revolver, or other firearm capable of being~~
14 ~~concealed upon the person~~ *handgun* is not an assault weapon, as
15 defined in Section 12276 or 12276.1.

16 (12) The ~~pistol, revolver, or other firearm capable of being~~
17 ~~concealed upon the person~~ *handgun* is not a machinegun, as defined
18 in Section 12200.

19 (13) The person is 18 years of age or older.

20 (o) For purposes of paragraph (6) of subdivision (n):

21 (1) Except as provided in paragraph (2), residency shall be
22 determined in the same manner as is the case for establishing
23 residency pursuant to Section 12505 of the Vehicle Code.

24 (2) In the case of members of the Armed Forces of the United
25 States, residency shall be deemed to be established when he or she
26 was discharged from active service in this state.

27 (p) As used in this code, “basic firearms safety certificate”
28 means a certificate issued by the Department of Justice pursuant
29 to Article 8 (commencing with Section 12800) of Chapter 6 of
30 Title 2 of Part 4, prior to January 1, 2003.

31 (q) As used in this code, “handgun safety certificate” means a
32 certificate issued by the Department of Justice pursuant to Article
33 8 (commencing with Section 12800) of Chapter 6 of Title 2 of Part
34 4, as that article is operative on or after January 1, 2003.

35 (r) As used in this title, “gunsmith” means any person who is
36 licensed as a dealer pursuant to Chapter 44 (commencing with
37 Section 921) of Title 18 of the United States Code and the
38 regulations issued pursuant thereto, who is engaged primarily in
39 the business of repairing firearms, or making or fitting special

1 barrels, stocks, or trigger mechanisms to firearms, or the agent or
2 employee of that person.

3 SEC. 2. Section 12043 is added to the Penal Code, to read:

4 12043. (a) Any person who acquires or reacquires ownership
5 of a handgun, or who reports his or her ownership of a handgun
6 to the Department of Justice on or after July 1, 2008, and thereafter
7 the handgun is stolen or irretrievably lost, shall, within five working
8 days after his or her discovery or knowledge of, or within five
9 working days after the date he or she should reasonably have
10 known of, the theft or loss, report the theft or loss to a local law
11 enforcement agency of the jurisdiction in which the theft or loss
12 occurred or in which the person resides.

13 (b) Any person who violates subdivision (a) is guilty of an
14 infraction punishable as follows:

15 (1) For a first violation of this section, by a fine not to exceed
16 one hundred dollars (\$100).

17 (2) For a second or subsequent violation of this section, by a
18 fine not to exceed two hundred fifty dollars (\$250).

19 (c) Any person who complies with subdivision (a) shall be
20 immune from any civil liability for the illicit use or possession of
21 the firearm occurring after the theft or loss. This subdivision shall
22 not apply if the person had prior knowledge of the misconduct or
23 was negligent with respect to the theft or loss of the firearm.

24 (d) No charge may be imposed for submitting a report pursuant
25 to this section.

26 (e) The Department of Justice shall, in promulgating forms and
27 reports pursuant to any provision of law that requires or allows a
28 person to report his or her ownership of a handgun to the
29 department, include information indicating the reporting
30 requirements of this section.

31 (f) Commencing July 1, 2008, the licensee shall, at the time of
32 delivering a handgun to a person acquiring ownership or to a person
33 complying with the requirements of paragraph (2) of subdivision
34 (f) of Section 12072, provide the person with a written notice of
35 the requirements of this section in a format prescribed by the
36 department. The licensee shall sign and date an affidavit in
37 duplicate stating that the person receiving the handgun has been
38 given the notice. The licensee shall additionally obtain the signature
39 of the person receiving the handgun on the same affidavit. The

1 licensee shall retain the original affidavit and provide the duplicate
2 to the person receiving the handgun.

3 (g) Nothing in this section shall be construed to preempt an
4 existing ordinance or to prevent a local government from enacting
5 an ordinance, that imposes reporting requirements that are more
6 strict than those specified in subdivision (a).

7 (h) Compliance with this section does not require that a person
8 reporting a lost or stolen handgun report the make, model, and
9 serial number of the handgun.

10 (i) The Attorney General, in cooperation with those law
11 enforcement agencies and firearms-related organizations as may
12 choose to do so, shall develop a protocol for the implementation
13 of the provisions of this section. The protocol shall be completed
14 on or before April 1, 2008.

15 (j) The provisions of this section are cumulative and shall not
16 be construed as restricting the application of any other law.
17 However, an act or omission punishable in different ways by this
18 section and different provisions of this code shall not be punished
19 under more than one provision.

20 SEC. 3. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.